IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 795/1999

RAMLAL Vs. STATE OF RAJASTHAN & ANR.

DATE: 21.02.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Manish Kumawat for the petitioner.
Mr. Ashwani Kumar Sharma, PP for the State.
Mr. R.K. Daga for the respondent.

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R E P O R T A B L E

The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioner against the order dated 02.11.1999 passed by the Special Judge, SC/ST (Prevention of Atrocities) Cases, Jaipur & Additional Sessions Judge, Jaipur City, Jaipur in Criminal Revision Petition No. 116/99, whereby the order dated 21.09.99 passed by the Additional District Magistrate-II, Jaipur in Case No. 176/99 passed under Section 133 Cr.P.C. has been set-aside.

In brief the facts of the case are that the petitioner let out a shop to respondent Mohammed Hanif through a rent note in the year 1988 and there was a

clause that the tenant will not create any nuisance and it was made clear that the shop would be utilised for the bakery purposes. It is alleged that after letting out the shop, the size of the furnace has been increased and the tenant was using 5 quintals wood for the purposes of bakery and by raising the quantity of furnace, created public nuisance, smoke and also increased heat which caused damage to the walls and roof of the nearby houses on account of the gas and heat. Therefore, a complaint under Section 133 Cr.P.C. was submitted by the petitioner before the A.D.M., who after investigation found that it is public nuisance and vide its order dated 21.09.99 confirmed the order dated 12.04.99 under Section 142 Cr.P.C., against which the respondent-tenant has preferred a criminal revision petition before the Additional Sessions Judge, Jaipur City, Jaipur. The Additional Sessions Judge having considered the submissions of the respective parties, has observed that as per the rent note, business which is carried by the tenant-revision petitioner before the Revisional Court is legally authorised as the permission was also accorded by the Municipal Corporation, Jaipur. It was also observed that the land lord has filed this petition under Section 133 Cr.P.C.

regarding public nuisance, although few witnesses and neighbours have been examined and they have supported the version of the petitioner but the Revisional Court has observed that it is not a public nuisance and it may be a personal nuisance. It was also observed that for the purpose of getting eviction, the petitioner has availed this remedy to redress his grievance.

Learned counsel for the petitioner placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Govind Singh Vs. Shanti Sarup, reported in 1978(6) Cr.L.R.(SC) 524**, wherein the Hon'ble Supreme Court has observed that working of a bakery emitting smoke- Injurious to -Health, safety & convention of public- Held, proper order is demolish oven within one month.

It is for the Court below to see the intensity of the pollution created by the furnace, whereas the learned A.D.M. has observed that there is public nuisance on account of smoke as supported by some witnesses and merely because the complaint has been preferred by the land lord, does not disqualify the land lord to raise the objection that on account of furnace, there is pollution. For adjudging the intensity of the pollution, it is proper for the Court

below to get verify this fact from the Pollution Control Board which is competent authority to ascertain the pollution and they are expert working in this field.

Learned counsel appearing for the respondent has placed reliance on the judgment rendered by this Court in the case of **Darwara Singh Vs. The State of Rajasthan & Ors., reported in 1991 Cr.L.R. (Raj.) 454,** wherein it is observed that public nuisance- Obstruction not caused to public in general but to some individual- Held, the dispute is personal and to be decided by the civil court.

Having considered this preposition as held by this Court, it can be a individual obstruction and can not be a public nuisance and for that the land owner can redress his grievance. Although the petitioner knowing this fact that the tenant will operate the furnace and a rent note was also executed to this effect, but the fact which has been narrated in the complaint that the tenant has increased the capacity of the furnace has not been examined, which is necessary to be examined whether the size of the furnace has been increased and quantity of the production which was carried by the tenant-respondent has been still

maintained or not? These facts are not considered at the time of decision of the revision petition preferred by the tenant-respondent and even for individual nuisance the Court has to examine whether there is nuisance on account of smoke or not and as observed herein above, through competent authority like Pollution Control Board.

In the light of the aforesaid observations, I deem it proper to remand the matter back to the Revisional Court for fresh adjudication after giving thoughtful consideration not on the presumption but on the facts whether there is any pollution after getting the report from the Pollution Control Board and then pass appropriate order.

With these observations, the revision petition stands allowed and the impugned order dated 02.11.99 passed by the Revisional Court i.e. the Special Judge, SC/ST (Prevention of Atrocities) Cases, Jaipur & Additional Sessions Judge, Jaipur City, Jaipur is hereby quashed and set-aside.

Record be sent back forthwith.

(K.S. RATHORE),J.

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